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January 17, 1962
Opinion No. 62-9

REQUESTED BY: Honorable Fred O. Wilson
Navajo County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. Is Navajo County as of this date
officially classified according to its
assessed valuation as a county of the
first class for salary purposes?

2. Do elected county officials re-
ceive an automatic salary increase
during their term when a second class
county becomes a first class county
by assessed valuation?

CONCLUSIONS: 1. Yes.
2. No.

The two questions set forth above were considered by this office at the request of the Navajo County Attorney, who asked that we review his proposed opinion to his county assessor touching on the same subject. The analysis of previous court decisions and applicable statutory provisions cited by the Navajo County Attorney in his proposed opinion has been of great assistance in helping us reach the conclusion contained herein. Although this opinion qualifies the conclusion reached in Attorney General's Opinion No. 55-5A, the law contained therein and the general principles contained in other previous Attorney General opinions were also of great assistance to us.

In answer to the first question, we have found that the State Board of Equalization entered an order on August 11, 1961, confirming Navajo County's assessed valuation to be in excess of thirty million dollars. Therefore, Navajo County's classification for salary purposes falls within the first class category in accordance with the provisions of A.R.S. §11-417(A).

The second question asks whether elected county officials may have their compensation increased during their term of office. The controlling basic law on this subject is found in Article 4, Part 2, Section 17 of our Arizona Constitution, which provides, in part, as follows:

"§17. Extra compensation prohibited; increase or decrease of compensation during term of office

Section 17. The Legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer, other than a justice of the peace, be increased or diminished during his term of office. . . ."
(Emphasis supplied)

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Our Arizona Supreme Court has repeatedly acknowledged that this constitutional provision is a limitation upon the powers of our Legislature. Based on that premise, any change or modification of the words or intent of this constitutional provision would require direct action of the people of this state exercising their right to amend our Constitution. Priser v. Frohmiller, 42 Ariz. 30, 21 P.2d 927 (1933).

This provision in our Constitution is a declaration of policy that public officers' compensation shall not be increased or diminished during their term of office. Greenlee County v. Laine, 20 Ariz. 296, 180 P. 151 (1919). One of its purposes is to establish definiteness and certainty in the salaries of public officials and to protect the independence, security and efficiency of such officers. Yuma County v. W. W. Sturges, 15 Ariz. 538, 140 Pac. 504 (1914).

It is interesting to note that the court, in the case of Yuma County v. Sturges, supra, acknowledged that the compensation of any public officer could only be increased or diminished during the term for which he was elected in the absence of a constitutional prohibition. Our Supreme Court has repeatedly held that Article 4, Part 2, Section 17 of our Constitution inhibits our legislative body from increasing or diminishing the compensation of public officers during their term in office. State Consol. Pub. Co. v. Hill, 39 Ariz. 21, 3 P.2d 525; (Rehearing denied, decision modified on other grounds, 39 Ariz. 163, 4 P.2d 668 (1931)). Convinced that this constitutional provision abridges our state legislative power to increase the compensation of any public officer during his term, the question might well be asked whether the salaries of public officers may not be increased or diminished during their term of office by some other means. Our Supreme Court in 1931 held that a stipulation between parties to ignore this section of our Constitution could have no force or effect. State Consol. Pub. Co. v. Hill, supra. It also follows that any attempt by our State Legislature to enact laws that would permit the salaries of public officers to be increased or diminished during their term of office by any means whatsoever would be, in our opinion, contradictory to Article 4, Part 2, Section 17 of our Arizona Constitution, and therefore invalid.

This does not mean that the constitutional provision referred to above prevents the legislature from enacting laws affecting the salaries of public officials, as long as such statutes are consistent with our Constitution. The legislature, fully aware of this abridgement in its law-making powers, provided in A.R.S. §11-417, as follows:

"§11-417. County classification for salary purposes

A. For the purpose of fixing the compensation of county and precinct officers, the several counties of the state are classified according to the assessed valuation of their taxable property as fixed and determined upon the assessment and tax rolls of the counties. When the

assessed valuation of the taxable property of any county changes to a higher or lower class, the class of the county shall likewise change.

1. Counties having an assessed valuation of more than thirty million dollars shall belong to the first class.

2. Counties having an assessed valuation of more than fifteen million dollars and not over thirty million dollars shall belong to the second class.

3. Counties having an assessed valuation of less than fifteen million dollars shall belong to the third class.

B. The compensation of an officer shall be determined by the assessment roll of the year of election or appointment of such officer. (Emphasis supplied)

Subsection (A) of A.R.S. §11-417 establishes standards that are to be followed in classifying counties for salary purposes. Subsection (B) of A.R.S. §11-417 determines the time when such increases or decreases of salary of county officials would take effect. Neither of these provisions could be interpreted as permitting the increasing of an elected county official's salary during his term in office, nor could such increases or decreases of salary take place without directly violating the present wording of the above-referred constitutional provision.

The State of Arizona is not alone in concluding that the compensation of public officials may not be increased or diminished during their term in office when a constitutional prohibition such as ours exists. The Constitution of the State of Wyoming provides as follows:

" . . . no law shall extend the term of any public officer nor increase or diminish his salary or emoluments after his election or appointment. . . ."

The Supreme Court of the State of Wyoming over a long series of court decisions dating back to 1892, has stated that this constitutional provision prevents a change in the salary of county officials during their term in office, although the county may have been placed in a higher class by reason of a change in its assessed valuation. Bd. of Comm'rs. of Converse County v. Burns, 29 Pac. 894 (1892). This decision specifically rejected the contention that the salaries of county officials increased by operation of law after their election, when the class of a particular county is upgraded by reason of an increase in their assessed valuation during the officer's term in office.

The following Wyoming cases have quoted the above decision favorably and have strengthened the legal principle involved:

Guthrie v. Bd. of Comm'rs. of Converse County,
50 P. 229 (1897)

Bd. of Comm'rs. of Crook County v. Mulholland,
136 P. 112 (1913)

Nickerson v. Winslow, 138 P. 184 (1914)

Also, of interest, see the following two Pennsylvania cases:

Commonwealth v. Walter, 118 A. 510

Commonwealth v. Kenny, 1 Kulp, 231

These last two cases differ from our own fact situation in that the salary increases were based on reclassification of counties according to population, rather than assessed valuation. Nevertheless, all of these courts have had before them the application of a similar constitutional prohibition and statutory limitation as found in Arizona. Therefore, it can be said that the legal principle involved in all of these cases is the same and our conclusion is consistent with the decisions of these courts.

The latest decision right on point was handed down by the Supreme Court of Wyoming, December 28, 1954, in the case of Barber v. Bd. of Comm'rs. of Uinta County, 277 P.2d 977. In this case counsel for the plaintiff based his argument primarily on the following point:

"The assessed valuation of a county standing alone is an ultimate and extraneous fact, compelling by operation of law, the use of a standard fixed prior to the election of these officers, and not a law increasing or diminishing the salary or emolument of a public officer after his election."

The court in a brief but well-presented opinion, refused this argument and held in part as follows:

". . . The simple facts are these: When county officials are elected or enter upon their duties there should be a definite basis according to which their salary is fixed. It should not be left to surmise or conjecture. The board of county commissioners should know what they must pay and the officials are entitled to know what they will receive. Such a basis has been furnished by the constitution and by the legislature, namely the assessed valuation as fixed by the administrative agencies previous to the election or appointment of the officials. And we might say parenthetically that generally speaking, in view of our statutes, the basis cannot be considered to be too unfair. In any event, it is the only basis existing when the officials are elected or enter upon their duties." (Emphasis supplied)

Honorable Fred O. Wilson
Navajo County Attorney

Page 5
January 17, 1962

Prior Attorney General opinions have questioned the origin of some of the wording presently found in A.R.S. §11-417(B). Any different interpretation or change that this wording might have undergone over the years cannot justify the increasing or diminishing of the compensation of any public officer during his term of office, in direct contradiction of our fundamental state law.

Therefore, it is the opinion of the Department of Law that the compensation of any public officer, other than a justice of the peace, may not be increased or diminished during his term of office, by reason of Article 4, Part 2, Section 17 of our Arizona Constitution. The compensation of a county officer is an incident to his office from the very beginning of his term and any increase or decrease in his salary occasioned by a reclassification would have to take place at the time such officer first commences his term in office following said reclassification.

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